

08-0628
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2007
SIGNED: 10-16-2008
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, D. DIXON
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	Appeal No. 08-0628
v.	Parcel No. #####
BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,	Tax Type: Property Tax / Locally Assessed Tax Year: 2007
Respondent.	Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP., from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 17, 2008.

One issue is the fair market value of the subject property as of January 1, 2007. The subject is a single-family residence located at ADDRESS 1 (STREET 1) in CITY 1, Utah. The Salt Lake County Board of Equalization ("County BOE") reduced the \$\$\$\$ value at which the subject was originally assessed to \$\$\$\$\$. The property owner asks the Commission to reduce the subject's fair market value to a value that falls between \$\$\$\$ and \$\$\$\$\$. The County asks the Commission to reduce the subject's value to \$\$\$\$.

Another issue concerns the subject's land value as of January 1, 2007. The property owner asks the Commission to reduce the land value. He asserts that his taxes were increased greatly, in part, because the County increased the total value of the subject's 2.65 acres from \$\$\$\$ in 2006 to \$\$\$\$ in 2007. Because the subject property is greater than one acre in size, only the first acre of land receives the 45% primary residential exemption. The County BOE established a value of \$\$\$\$ for the first acre of the subject property. The remaining 1.65 acres of the subject lot does not receive the exemption and, thus, is taxed at 100% of its value. The County BOE established a value of \$\$\$\$ for the 1.65 acres not subject to the exemption.

The taxpayer asks the Commission to reduce the total land value to \$. He also stated that except for the portion of the lot where the home is located, the remainder of the lot is too steep to be built upon. However, he does not indicate how to divide his proposed \$\$\$\$ land value into an amount for the first acre that receives the exemption and an amount for the remaining 1.65 acres that does not receive the exemption. The County asks the Commission to sustain both land values established by the County BOE.

APPLICABLE LAW

UCA §59-2-103(2) provides that “. . . the fair market value of residential property located within the state shall be reduced by 45%. . .” UCA §59-2-103(3) provides that “[n]o more than one acre of land per residential unit may qualify for the residential exemption.”

Utah Code Ann. §59-2-1006(1) provides that “[a]ny person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission”

Any party requesting a value different from the value established by the County BOE has the

burden to establish that the market value of the subject property is other than the value determined by the county board of equalization.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

The subject property consists of the 2.65-acre lot described earlier and a one-story home that was built around 1997. The subject's exterior is stucco. The home contains 1,602 square feet of above-grade living space and an unfinished basement that is 1,586 square feet in size. Zoning in the subject's neighborhood requires a 2.5-acre lot for each residence. The subject property is located on a gravel road. The property owner proffered that that he and other owners of properties on gravel roads in the area must pay a homeowner's fee to have the roads plowed in winter and must take their garbage to a paved road that runs through the area. The property owner estimates that the paved road is about one-half mile from the subject property. The property owner's mailbox is also located on the paved road.

First, the Commission will address the fair market value of the entire property, after which it will address the issue concerning land value.

I. Value of Total Property.

The property owner submits two comparable sales of nearby homes. The property owner's first comparable sold for \$\$\$\$ in September 2006. This two-story home has more square footage than the subject property. As a result, the property owner believes his home must be worth less than \$\$\$\$ and asks the

Commission to reduce the subject's total value to somewhere between \$\$\$\$\$ and \$\$\$\$\$. However, the Commission is not convinced that this comparable is representative of market value for homes in the subject's neighborhood. First, the Multiple Listing Service ("MLS") information for this comparable shows that it was "corporate owned" and sold "as-is." The comparable also sold at its list price only three days after being listed at \$\$\$\$\$. Second, the price for this home is significantly below the sales prices for all other comparables that the parties proffered. The parties proffered four other comparables, none of which show signs of possible distress. These four comparables, as described below, sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$.

The property owner proffered one of the four remaining. It is a two-story home that sold for \$\$\$\$\$ in August 2006. It is located approximately four blocks from the subject property and was built in 1986. This comparable consists of 2.50 acres and a home with 2,698 square feet of above-grade living space and a 1,349 square foot basement that is 80% finished. It is a log home. The property owner states that this home is superior to the subject property because it is a log home that is larger than the subject and because it is located on the paved road. This comparable would suggest that the subject's value is below \$\$\$\$\$.

The County submits an appraisal in which it compares the subject property to three additional comparables sales that are located within one mile of the subject property. The County's comparables sold in mid-2006 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. With these comparables, the appraiser derived adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$, respectively. From these adjusted sales prices, the appraiser determined a value of \$\$\$\$\$ for the subject. The appraiser asks the Commission to reduce the subject's total value to this amount.

Like the subject property, all of the County's comparables are one-story homes. The County's first two comparables sold for prices of \$\$\$\$\$ and \$\$\$\$\$, respectively. These homes, like the subject, are not log homes. The County's Comparable #3 is a log home that sold for \$\$\$\$\$. The property owner argues that

log homes cost more to build and have a higher value than homes, such as the subject, that are not constructed of logs. The County appraiser stated that he did know whether a log home cost more to build or whether its value would be higher than a home whose exterior was stucco or vinyl. For this reason, he made no construction adjustment for County Comparable #3 in his appraisal. In contrast, he adjusted County Comparables #1 and #2 by \$\$\$\$\$ because they were constructed of vinyl and brick and vinyl and stone, respectively, which he considered inferior to the subject's stucco construction.

The Commission notes that County Comparable #3 sold for a price that is \$\$\$\$\$ higher than the sales price of any other comparable. The appraiser admitted that he was unfamiliar with log homes and did not know whether their constructions costs and values were higher than other homes. The Commission also notes that Comparable #3 is located on a paved road, while the subject is not. As a result, the Commission is concerned that Comparable #3's log construction and location on a paved road may add value that was not accounted for in the County's appraisal.

The Commission finds that County Comparables #1 and #2 appear to be most similar to the subject property in style, construction and size. However, Comparable #1, the larger of these two homes, sold for \$\$\$\$\$ and adjusted to \$\$\$\$\$. In contrast, Comparable #2, the smaller of the two and closer in size to the subject, sold for \$\$\$\$\$ and adjusted to \$\$\$\$\$. Based on this limited information, the Commission believes that the subject's value is somewhere in a range between \$\$\$\$\$ and \$\$\$\$\$.

The Commission notes that except for the County Comparable #3, the log home that sold for \$\$\$\$\$, the remaining, non-distressed comparables sold in 2006 for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. The Commission notes that the two comparables that are larger in size than the subject sold for \$\$\$\$\$ and \$\$\$\$\$, while the home similar in size to the subject sold for \$\$\$\$\$. Based on these sales, the Commission believes that \$\$\$\$\$ is a better estimate of the subject's value than the \$\$\$\$\$ value estimated in the County's appraisal.

For these reasons, the Commission finds that the total fair market value of the subject property should be reduced from \$\$\$\$\$, as established by the County BOE, to \$\$\$\$\$.

II. Land Value.

Remaining at issue is the land value and whether the appropriate portion of the subject's total value is receiving the 45% primary residential exemption. In most instances, the value of a residential property is derived through a market approach that establishes a total value for the property without regard to the individual land and improvements values. How a County may have allocated that total value between land and improvements is, generally, immaterial when the Commission reviews the fair market value of a residential property. However, in this case, the allocation of the total value between land and improvements affects the property owner's tax liability because a portion of the property owner's land does not qualify for the primary residential exemption. Where a property owner challenges the land value under such circumstances, the Commission must address not only the property's total value, but also its land value.

Currently, the subject's 2.65 acres of land is valued at \$\$\$\$\$. The County BOE allocated \$\$\$\$\$ of the \$\$\$\$\$ land value to the subject's first acre, which receives the primary residential exemption. The County allocated \$\$\$\$\$ of the \$\$\$\$\$ land value to the remaining 1.65 acres, which does not receive the exemption.

The taxpayer states that most of the subject's land is subject to slopes that are greater than 30%. As a result, he asserts that he cannot build any additional structures on his property due to a "hillside moratorium" that was put in place after he built his home in 1997. To support a lower land value, the taxpayer submits four sales of vacant lots that sold in 2006 for prices between \$\$\$\$\$ and \$\$\$\$\$. These comparables

ranged in size from 2.54 acres to 10.56 acres. The 2.54-acre lot, which is most similar in size to the subject, sold for \$\$\$\$\$. One of the other sales is for a lot that is adjacent to the subject property. This comparable is 5.12 acres in size and sold for \$\$\$\$\$. Based on these sales, the property owner asks the Commission to reduce the subject's total land value from \$\$\$\$\$ to \$\$\$\$\$.

The Commission notes, however, that information on the MLS sheets for the property owner's comparable sales indicates that none of these lots can currently be built on. The County appraiser confirms that many of the lots in the subject's area are subject to the hillside moratorium and, as a result, are currently unbuildable. The appraiser also states that the subject property's land is worth more than these "unbuildable" lots because it already has a home located on it and that its current use was "grandfathered" when the hillside ordinance was passed after 1997. For these reasons, he asserts that the subject property's land is worth more than the unbuildable lots that the property owner submitted as comparables. The appraiser further states that he has determined that the subject's 2.65 acres of land is worth \$\$\$\$\$, based on a study of buildable lots in the subject's area. For these reasons, he asks the Commission not to reduce the subject's land value to a price derived from the property owner's comparables. However, he also asks the Commission not to reduce the subject's land value to the \$\$\$\$\$ land value he derived, because the County is concerned with total value and not the allocation of total value between land and improvements.

First, the Commission is convinced that the subject land on which a home has already been built is worth more than land that is currently unbuildable. Accordingly, the Commission is not convinced that the property owner's comparables reflect the subject's land value. Second, as explained earlier, the land value is an issue that is pertinent in this appeal because a portion of the land is not subject to the primary residential exemption. The County's appraisal shows a cost value of \$\$\$\$\$ for the 2.65-acre subject lot. In addition, the County appraiser explained that he derived the \$\$\$\$\$ land value from a study of buildable lots in the subject's

area. For these reasons, the Commission is convinced that \$\$\$\$ is a better value for the subject's land than the \$\$\$\$ value established by the County BOE.

As the Commission has determined that the total land value should be reduced to \$\$\$\$\$, it must also decide how to allocate the \$\$\$\$ between the first acre that receives the primary residential exemption and the remaining 1.65 acres that does not. Neither party had a suggestion on how to allocate the value. As a result, the Commission will allocate the \$\$\$\$ total land value based on a ratio of the land values established by the County BOE. Of its total land value of \$\$\$\$\$, the County BOE allocated \$\$\$\$\$, or %%%%, to the first acre and \$\$\$\$\$, or %%%%, to the remaining 1.65 acres. Applying these percentages to the \$\$\$\$ land value results in a value of \$\$\$\$ for the first acre that receives the primary residential exemption and \$\$\$\$ to the remaining 1.65 acres that does not receive the exemption.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's total value of \$\$\$\$\$, as established by the County BOE for the 2007 year, should be reduced to \$\$\$\$\$. The total value of \$\$\$\$ should be allocated as follows:

Primary Land Value:	\$\$\$\$
Secondary Land Value:	\$\$\$\$
Improvements Value:	<u>\$\$\$\$</u>
Total Value:	<u>\$\$\$\$</u>

The Salt Lake County Auditor is ordered to adjust its records to reflect this decision. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the taxpayer's name, address, and appeal number:

Appeal No. 08-0628

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2008.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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